THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 1642 OF 2005

17th August, 2005

Between:

Sterling Stonex (P) Ltd.,

Rep. By its Executive Director,

Having office at 2-98/3, 10 B,

Block-B, Kakatiyanagar, Habsiguda,

Hyderabad …Petitioner

A N D

1. Director of Mines and Geology, office

at B.R.K.R. Bhavan, Hyderabad and Others …Respondents

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ORDER:

1. This writ petition has been filed by Sterling Stones (P) Ltd., represented by the Executive Director, with a prayer to issue an appropriate writ order or direction more particularly one in the nature of mandamus declaring proceedings No. 37098/R1-3/03, dated 27-1-2005 issued by the Director of Mines and Geology-5th respondent as arbitrary, illegal and without jurisdiction.

2. M/s Agarwal Granites, Kanchili, Srikakulam District made an application for grant of quarry lease on 2-5-1997 enclosing the necessary documents including the rough sketch of the area for which lease was sought. The said application was received by the 1st respondent and the same was referred to the Deputy Director of Mines and Geology, Visakhapatnam and the District Collector, Srikakulam for their survey, inspection and land clarification reports. The District Collector, Srikakulam through the office of Mandal Revenue Officer, Tekkali issued a no objection certificate for grant of quarry lease, after survey and demarcation of the area, enclosing a survey map which shows the contours within which the land is located. The Deputy Director of Mines and Geology, Visakhapatnam-lst respondent by proceedings No. 14665/R1-3B/97, dated 26-5-1998 granted quarry lease for colour granite for a period of 15 years over an extent of 7 hectors in Sy.No.1 of Addukonda village, Tekkali Mandal, under Rule 12 (5) of A.P.Minor Mineral Concession Rules, 1966. Pursuant to the said proceedings an agreement was entered on 30-5-1998. Subsequently, 3rd respondent vide proceedings No. 2123/Q/98, dated 30-5-1998 issued the work order in favour of M/s Agarwal Granites permitting it to enter and work the quarry area under the provisions of A.P.Minor Mineral Concession Rules. The Assistant Director of Mines and Geology-3rd respondent issued transport permission for granite blocks excavated from the area to the said company. The said company carried on its mining operations within the boundaries and area leased out to it. M/s Agarwal Granites applied to the 1st respondent for transfer of quary lease in favour of the petitioner company on 17-10-2000. The 1st respondent transferred the lease in favour of the petitioner on 21-11-2000. One M/s Gallop Granites Ltd., was also granted a quarry lease in an extent of 15 hectors in Sy.No.1. The total extent of which is about 2300 acres. M/s Gallop Granites Ltd., submitted a representation in March, 2000 to resurvey land to its company and the land leased to M/s Agarwal Granites. Pursuant to the said request resurvey was conducted by the office of the Assistant Director of Mines and Geology-3rd respondent and a survey report was submitted to the 1st and 2nd respondents in March, 2000. While granting lease in favour of M/s Gallop Granites the land was surveyed and a sketch of the land was prepared. According to the petitioner company the 3rd respondent altered the sketch and the said alterations were carried out in the sketch map only with a view to enable the 4th respondent to grab the land in possession of the petitioner, which has

good deposits of mineral. On transfer of the quarry lease in its favour, the 4th respondent requested the 3rd respondent to resurvey the land once again and to fix the boundaries to its leased lands. Pursuant to the said request the 3rd respondent instructed the petitioner to attend the proposed survey from 1-4-2004 to 3-4-2004 by letter dated 15-3-2004. The petitioner company objected to the resurvey. The 4th respondent again made an application on 20-5-2004 to 3rd respondent for resurvey. The petitioner on receipt of the notice of the proposed survey once again objected to the same bringing to the notice of the 3rd respondent that they are working within the boundaries as reflected in scaled sketch of Survey No.1. The land leased and transferred to the petitioner was surveyed in May, 1998 and March, 2000. Both the surveys confirmed that the petitioner is carrying on its activities within the boundaries fixed. Resurvey has been conducted at the instance of the 4th respondent in spite of the objection raised by the petitioner. Basing on the resurvey the Director of Mines and Geology (1st respondent) issued the proceeding impugned in the writ petition.

3. Counter affidavits have been filed by the respondents 1 to 3 and also respondent No.4. One Dr. P.Dayashankar has sworn to the affidavit filed on behalf of respondents No. 1 to 3. It is stated the circumstances that lead to order for resurvey of the leased lands have been detailed in the counter affidavit.

4. The counter of the 4th respondent is also on the same lines as that of the respondents No. 1 to 3.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent No.4 and the learned Government Pleader for Mines and Geology appearing for Respondents No. 1 to 3.

6. The learned counsel for the petitioner submits that there was an earlier survey on 15-3-2000 wherein each party was found to be in possession of the respective lease lands and therefore, there was no reason in ordering resurvey of the lease land at the instance of the 4th respondent. He further submits that the Director of Mines and Geology has not taken note of the objections raised by the petitioner company with regard to resurvey. He would also submit that no opportunity was given to the petitioner before passing the impugned order by the 1st respondent and therefore

the order passed by the 1st respondent was in violation of principles of natural justice.

7. The learned Government Pleader for Mines and Geology appearing for respondents 1 to 3 submits that notice was given to the petitioner with regard to resurvey of the leased lands and the resurvey was conducted in the presence of both the parties and therefore, the petitioner cannot be permitted to plead the violation of principles of natural justice. He also submits that the Director of Mines and Geology considered the check survey report and pass the impugned order and therefore, the writ petition is devoid of merits and the same is liable to be dismissed.

8. The learned senior counsel appearing for the Respondent No.4 submits that the writ petitioner was very much present at the time of resurvey and the survey was conducted by the competent person and therefore, the Director of Mines and Geology is justified in placing reliance on the said report in passing the impugned order. He further submits that the petitioner has a remedy of an appeal under Section 35 of the A.P.Minor Mineral Concession Rules, 1966 and therefore, the writ petition is not maintainable.

9. It has come on record that notice has been given to the petitioner with regard to resurvey of the leased lands. The writ petitioner raised certain objections with regard to resurvey of the land. The Director of Mines and Geology taking into account the check survey report submitted by survey team comprising Assistant Director of Mines and Geology, Tekkali, Srikakulam-II, Assistant Mining Officer, Hyderabad, Assistant Director of Mines and Geology, Tekkali, Surveyor office of the Assistant Director of Mines and Geology Srikakulam passed the order impugned in the writ petition.

10. The appeal lies against the order passed by the Director of Mines and Geology to the Government under Section 35 of the A.P. Minor Mineral Concession Rules, 1966. Since, the writ petitioner has efficacies alternative remedy, he has to exhaust the statutory remedy before invoking the jurisdiction of the Court under Article 226 of the Constitution of India.

11. The writ petition is disposed of giving liberty to the petitioner to file appeal before the Government as provided under Section 35 of the A.P.Minor Mineral Concession Rules, 1966 within (30) days from the date of this order. The order of status quo shall

continue till the presentation of the appeal before the appellate authority. No order as to costs.

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B.Seshasayana Reddy, J.

17th August, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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